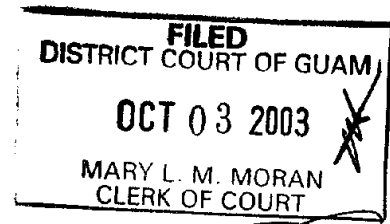


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4 **ANTHONY R. CAMACHO, ESQ.**
5 **STAFF ATTORNEY FOR THE CCU, GPA, AND GWA**
6 **Office No. 227, GPA Main Office, 1911 Route 16**
7 **Harmon, Guam, 96913**
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9



10 *Attorney for Defendant Guam Waterworks Authority*
11

12 UNITED STATES DISTRICT COURT OF GUAM

13 TERRITORY OF GUAM

14
15
16 UNITED STATES OF AMERICA,) CIVIL CASE NO. 02-00035
17)
18 Plaintiff,)
19)
20 vs.) **DEFENDANT GUAM WATERWORKS**
21) **AUTHORITY'S STATUS**
22 GOVERNMENT OF GUAM, *et. al.*) **MEMORANDUM RE BILL 97**
23)
24)
25)
26)
27)

28 **BACKGROUND**

29 **The Consent Decree in *U.S. v. Government of Guam and Guam Waterworks Authority*,**
30 **CV99-00102 (U.S. District Court of Guam)**

31 The U.S. Navy operates the U.S. Navy Public Works Center Guam (Hereafter Referred to
32 as: "U.S. Navy") water production and distribution system on Guam. The U.S. Navy's water
33 production and distribution system was developed, constructed, maintained, and operated by the
34 U.S. Naval Government of Guam. Historically, the U.S. Navy's water production and
35 distribution system on Guam was built to provide water service to both U.S. military forces and
36 the civilian population on Guam before and after World War II. When the civilian Government of

ORIGINAL

1 Guam replaced the U.S. Naval Government of Guam as a result of the Organic Act, the U.S.
2 Navy reserved, through a U.S. Executive Order, the U.S. Navy's water production and
3 distribution system on Guam which served all U.S. Military Forces and Dependant Housing Areas
4 on Guam. The Commanding Officer of the U.S. Navy Public Works Center Guam, pursuant to
5 his authority under 10 U.S.C. §2686, sold, and the Government of Guam, through the Public
6 Utilities Agency of Guam(Hereafter referred to as: "PUAG"), agreed to purchase excess water
7 produced by the U.S. Navy's water production and distribution system on Guam. This
8 Agreement was memorialized in writing in a Memorandum of Understanding dated June 18, 1991
9 (Hereafter Referred to as: "MOU"). The Government of Guam, through PUAG, and eventually
10 through its successor the Guam Waterworks Authority (Hereafter Referred to as: "GWA")
11 received water from the U.S. Navy's water production and distribution system on Guam from the
12 date of the MOU to the present.

13 In the early 1990s, the Government of Guam complied with the terms of the MOU and
14 paid for the water it received from the U.S. Navy's water production and distribution system on
15 Guam. However, sometime in January, 1995, the Government of Guam stopped making
16 payments under the MOU, but continued to receive water from the U.S. Navy, and the it
17 continued to bill the Government of Guam for said water. The debt owed by the Government of
18 Guam to the U.S. Navy for this water grew to approximately \$10,900,000 from 1995 to 1999.
19 As a result of the accumulation of this debt, the U.S. Attorney's Office on Guam, pursuant to 28
20 U.S.C. §3001, which gives it authority to collect any debt owed to the United States or any of its
21 agencies, filed this present case to collect the money the Government of Guam owed the U.S.
22 Navy under the MOU.

1 The Government of Guam filed a Counter-Claim alleging that the U.S. Navy does not own
2 certain real and personal property used by the U.S. Navy to produce and distribute potable water.
3 Specifically, the Government of Guam had two principal arguments to support its counter-claim.
4 First, that the U.S. Navy unlawfully reserved, under 48 U.S.C. §1421f and Executive Order No.
5 10178, 15 Fed. Reg. 7313 (1950), the U.S. Navy's water production and distribution facilities on
6 Guam. The Government of Guam's success on this argument was dependant on the Court to
7 interpreting 48 U.S.C. §4121f(b) as limiting the Federal Authority to reserve the U.S. Navy's
8 water production and distribution facilities on Guam. Second, that the Government of Guam, and
9 not the U.S. Navy, has the Riparian Rights to the water in the Fena Water Shed area, which is the
10 principal source of the water used in the U.S. Navy's water production and distribution facilities
11 on Guam. The Government of Guam's success on this argument was dependent on the Court
12 finding that the source of the water in the Fena Watershed Area came from limestone areas that
13 are outside of the hydrological boundaries of the watershed of the Fena Reservoir, and that the
14 U.S. Navy unlawfully appropriated the water. The Government of Guam's Counter-Claim was
15 hotly contested by the U.S. Navy, and if pursued by the Government of Guam, would have
16 required protracted litigation prior to final Court resolution.

17 By 2003, after engaging in over three years of protracted litigation, the Government of
18 Guam, now represented by Guam's newly elected Attorney General, and GWA determined that
19 proceeding with the case would most likely require a time-consuming and expensive appeal whose
20 ultimate success was in doubt, based on the facts of the case. As a result of the foregoing, the
21 Government of Guam and GWA entered into settlement negotiations with the U.S. Navy, a
22 settlement agreement was reached, and on May 9, 2003, a Consent Decree transcribing the

1 settlement agreement into an enforceable Court Order, was filed in the U.S. District Court of
2 Guam. The Consent Decree requires the Government of Guam and GWA to pay \$9,000,000,
3 plus interest, as set forth by 28 U.S.C. §1961(a), compounded annually, to the U.S. Navy, in
4 monthly payments of \$45,000 for the first five and a half (5 1/2) years, monthly payments of
5 \$132,545 for the succeeding two (2) years, and monthly payments of \$264,853 for the final year
6 and two months. Payments commenced on October 1, 2003. Thus, pursuant to this payment
7 plan, the \$9,000,000 debt owed by the Government of Guam and GWA to the U.S. Navy will be
8 paid off in approximately Nine (9) Years which will end in the year 2012.

9 As GWA was the principal party responsible for the payment of this debt to the U.S.
10 Navy, GWA sought rate relief from Guam's Public Utilities Commission (Hereafter Referred to as
11 "PUC") to pay off this debt. Instead of imposing a new surcharge on GWA customers, on June
12 23, 2003, the PUC extended an existing 11.5% surcharge, which was established in 2001 to pay
13 off GWA's existing debt to the Guam Power Authority (Hereafter Referred to as: "GPA"), to pay
14 GWA's debt to the U.S. Navy established by the Consent Decree.

15 The U.S. Attorney's Office settled for \$9,000,000 instead of the \$10,900,000 it initially
16 sought when the lawsuit was filed. In exchange for the \$1,900,000 concession made by the U.S.
17 Navy, the Government of Guam and GWA agreed to dismiss their Counter-Claim with Prejudice.
18

19 On August 5, 2003, the U.S. Attorney's Office on Guam filed an Abstract of Judgement in
20 the District Court of Guam and with Guam's Department of Land Management. Pursuant to 28
21 U.S.C. §3201, this created a lien on the real property assets that GWA owns or will acquire in the
22 future, and the lien will be extinguished when GWA pays of its debt to the U.S. Navy established

1 by the Consent Decree.

2
3 **The Stipulated Order in *U.S. v. Government of Guam and the Guam Waterworks***
4 ***Authority, CV02-00035 (U.S. District Court of Guam)***

5 In 1950, when the civilian Government of Guam came into existence as a result of the
6 Organic Act, the drinking water and wastewater systems, which were originally built by the U.S.
7 Navy as described above, that principally served the civilian population of Guam, became the
8 property of the Government of Guam and were subsequently maintained and operated by it. As a
9 result of the foregoing, and various improvement made by the Government of Guam to its water
10 system since 1950, GWA currently owns and operates five (5) sewage treatment plants on Guam
11 that are subject to the conditions and limitations contained in National Pollutant Discharge
12 Elimination System (Hereafter Referred to as: "NPDES") Permit Nos. GU0020087, GU0020095,
13 GU0020141, and GU0020273 issued by the U.S. Environmental Protection Agency (Hereafter
14 Referred to as "USEPA") pursuant to the Federal Clean Water Act. GWA also owns and
15 operates wastewater collection and conveyance systems, including approximately seventy-five
16 (75) sewage pump stations, that transport raw sewage from their point of origin to GWA's
17 sewage treatment plants. GWA's NPDES permits require GWA to properly operate and maintain
18 all their wastewater facilities and systems in compliance with certain requirements and restrictions
19 imposed by the permits.

20 GWA owns and operates three public water systems, the northern, central, and southern
21 systems, which supply drinking water for the majority of Guam's population. GWA is required to
22 operate and maintain its drinking water systems in compliance with the Federal Safe Drinking

1 Water Act, to include said Act's requirements concerning the maximum contaminant levels for
2 microbiological contaminants and the treatment techniques for turbidity.

3 For years, GWA was not operating its wastewater and drinking water systems in
4 compliance with the NPDES permits and the Federal Safe Drinking Water Act, and as a result of
5 these violations, the United States of America, on behalf of USEPA, filed a lawsuit against GWA
6 seeking injunctive relief and the assessment of an estimated twenty-eight \$28,000,000 in civil
7 penalties against GWA under the Federal Clean Water Act and the Safe Drinking Water Act.
8 GWA and the USEPA agreed to settle the lawsuit and on June 5, 2003, a Stipulated Order was
9 filed in the District Court of Guam transcribing the settlement agreement into an enforceable
10 Court Order. The Stipulated Order requires GWA to perform approximately \$220,000,000 of
11 necessary capital improvements to its wastewater and drinking water systems to bring them into
12 compliance with the Federal Clean Water Act and the Federal Safe Drinking Water Act.

13 **Bill 97**

14 As stated above, on September 13, 2001, the PUC established an 11.5% surcharge for all
15 GWA ratepayers to enable GWA to retire its obligations to GPA. This surcharge was abated for
16 a period of one year by P.L. 26-81. Although this Public Law abated the surcharge for one year,
17 it appropriated over \$2,000,000 to GWA to enable it to pay its obligations to GPA for the one
18 year abatement period. Further, P.L. 26-81 allowed the surcharge to automatically re-activate in
19 May, 2003. Further, as stated above, on June 23, 2003, the PUC extended the term of the
20 surcharge to enable GWA to pay for its \$9,000,000 debt to the U.S. Navy established by the
21 Consent Decree in CV99-00102.

22 Bill 97, introduced by Senator Mark Forbes, is currently under consideration by the 27th

1 Guam Legislature. The Bill states that one of the underlying justifications for P.L. 26-81's one-
2 year moratorium on the 11.5% GWA surcharge, was that the surcharge was intended to pay for
3 GWA's overdue power bills, and not for any improvements to the water or wastewater systems of
4 Guam and that the 26th Guam Legislature found this purpose, was in effect making the ratepayers
5 of Guam pay for GWA's alleged poor management decisions. Sec. 1, Bill 97. The Bill further
6 states that GWA is proceeding with the surcharge and would apply the surcharge again to GWA's
7 unpaid bills, and that the 27th Guam Legislature finds that current conditions are no different now
8 than last year when P.L. 26-81 became law, and the moratorium against the surcharge must be
9 extended. *Id.*

10 As a result of these findings, Bill 97 would abolish the surcharge for three years. Sec. 2,
11 Bill 97. Further, it would create a moratorium on any rate increase, or new or increased
12 surcharge billed by GWA if such increase or surcharge is intended, in whole or in part, to pay for
13 GWA's past due obligations to any vendor, including power consumption or the purchase of
14 water from water providers. Sec. 3, Bill 97. Also, GWA would be prevented from billing its
15 customers for any increase in rates or a new or increased surcharge for two years, if such increase
16 or surcharge is intended, in whole or in part, to pay for GWA's past due obligations to any
17 vendor, including power consumption or the purchase of water from water providers. *Id.* Unlike
18 its predecessor P.L. 26-81, Bill 97 does not appropriate any funds to GWA to enable it to pay its
19 existing debts to GPA or the U.S. Navy during the three year period the surcharge is abolished.

20 On September 27, 2003, in CV02-00035, the U.S. District Attorney's Office on Guam
21 filed a Request for a Status Conference and moved the U.S. District Court of Guam to schedule a
22 status conference and direct GWA and the Government of Guam to submit a report to the Court

1 explaining the impact of Bill 97 and its effect on GWA's ability to pay its debt to the U.S. Navy
2 established by the Consent Decree. On September 29, 2003, the 27th Guam Legislature held a
3 public hearing on Bill 97, and the Consolidated Commission on Utilities (Hereafter Referred to as
4 "CCU") testified against the passage of Bill 97 into law. On September 30th, 2003, in CV02-
5 00035, the U.S. District Court of Guam held a status conference, granted the U.S. District
6 Attorney's Office motion, and ordered all parties, including the Government of Guam and GWA,
7 to submit briefs explaining the impact of Bill 97 on the Consent Decree in CV99-00102, and the
8 Stipulated Order in CV02-00035, and describing what alternatives are available to the Court to
9 mitigate any adverse impact that Bill 97 would have on the aforementioned orders.

11 DISCUSSION

13 **If passed into law, Bill 97 would prevent GWA from complying with the Consent** 14 **Decree in CV99-00102, and the Stipulated Order in CV02-00035.**

15 GWA is dependent on the surcharge to pay for its debt to the U.S. Navy established by the
16 Consent Decree in CV99-00102. GWA's only source of income is the revenue it generates from
17 billing its customers for the water service that they receive. The payments due under the Consent
18 Decree began on October 1, 2003 and GWA has not budgeted any funds to make these payments
19 other than the revenue it is lawfully entitled to generate from the surcharge.

20 Should Bill 97 become law and the surcharge is abolished for three (3) years, GWA will
21 only have two choices to modify its budget to comply with the payment schedule established by
22 the Consent Decree. First, GWA could terminate approximately sixty of its remaining two-

1 hundred-sixty employees and use the saving generated from these cuts to make the payments
2 required by the Consent Decree. Second, GWA could divert funding for capitol improvement
3 projects for its water and wastewater systems and use the diverted funds to make the payments
4 required by the Consent Decree. However, if GWA resorts to either of these measures, it will
5 violate the Stipulated Order in CV02-00035.

6 The excessive termination of GWA employees will violate the Stipulated Order in CV02-
7 00035. The Stipulated Order requires GWA to reorganize itself to ensure that it is capable of
8 performing its mission and to fulfill this mandate GWA must retain a sufficient number of
9 employees to operate its drinking and wastewater systems, and to perform administrative duties.
10 Para. 9, Stipulated Order. GWA will be unable to perform its mission as required by the
11 Stipulated Order with only two hundred (employees).

12 The diversion of GWA funds set aside for capitol improvement projects will violate the
13 Stipulated Order. The only capitol improvement projects currently in GWA's budget are those
14 required by the Stipulated Order to bring GWA's drinking and wastewater systems into
15 compliance with the federal Clean Water Act and the Safe Drinking Water Act. The Stipulated
16 Order mandates that these projects be started and completed within established timetables.
17 Should Bill 97 become law and the funds set aside for these projects are diverted for the three
18 year period the surcharge is abolished, GWA will not be financially capable of starting and
19 completing the projects as required by the Stipulated Order.

20 Thus, if Bill 97 becomes law and the surcharge is abolished for three years, GWA will be
21 placed in a "Catch-22" situation. Specifically, GWA will be forced to comply with the payment
22 schedule established by the Consent Decree in CV99-00102, by violating the mandates of the

1 Stipulated Order in CV02-00035.

2 Finally, Bill 97's abolishment of the surcharge is a direct violation of the express terms of
3 the Stipulated Order in CV02-00035. Specifically, Bill 97 would prevent GWA from paying its
4 debts to GPA and the U.S. Navy and this would jeopardize GWA's ability to obtain a bond rating
5 sufficient to issue bonds to fund the capitol improvement projects required by the Stipulated
6 Order.

7 The capitol improvement projects mandated by the Stipulated Order to bring GWA's
8 drinking and wastewater systems into compliance with the federal Clean Water and Safe Drinking
9 Water Acts will cost approximately \$220,000,000. The Stipulated Order recognizes that the
10 Government of Guam and GWA do not have this amount on hand to complete these projects, and
11 that GWA's current rate structure will not support the payment of this amount, or the capitol to
12 finance the issuance of bonds to obtain this amount. To remedy this fact, the Stipulated Order
13 requires GWA to create a financial plan to achieve the financial solvency necessary to obtain a
14 bond rating and subsequently issue bonds to fund the projects. A key piece of this financial plan is
15 the Stipulated Order's requirement that GWA's revenues be sufficient to cover all of its
16 operations and maintenance costs, and **utility expenses (Bold Emphasis Added)**. Stipulated
17 Order, Para. III.10(6)(b), page 10, Line 8. Further, the Stipulated Order requires GWA's
18 revenues to be sufficient to pay for all of its **existing debt and expected debt service (Bold**
19 **Emphasis Added)**. *Id.* Para. 28. GWA is currently in compliance with these requirements because
20 the surcharge is the necessary rate relief that ensures GWA's revenues are sufficient to pay for its
21 existing obligations to GPA and the U.S. Navy. Thus, if Bill 97 becomes law, its three year
22 abolishment of the surcharge is a direct violation of the aforementioned paragraphs of the

1 Stipulated Order because without the surcharge, GWA's revenues would not be sufficient to meet
2 its obligations to GPA and the U.S. Navy.

3
4 **Should Bill 97 be passed into law, the Court has alternatives to enforce compliance**
5 **with the Consent Decree in CV99-00102, and the Stipulated Order in CV02-00035.**
6

7 **Bill 97 is Inorganic.**

8 Bill 97, if passed into law, would violate Guam's Organic Act. No law impairing the
9 obligation of contracts shall be enacted. 28 U.S.C. §1421b(j) (Guam's Organic Act Bill of
10 Rights). Here, the GWA's past due obligations to GPA and the debt to the U.S. Navy established
11 by the Consent Decree in CV99-00102 are based on valid and enforceable contracts GWA has
12 with those entities. The surcharge is the means that GWA is using to pay its obligations under the
13 aforementioned contracts.

14 Bill 97's prohibition against GWA imposing rates or surcharges to make payments under
15 those contracts and to other vendors with valid contracts with GWA acts as a substantial and
16 prejudicial impairment of the property rights guaranteed by Guam Organic Act's Bill of Rights.
17 Thus, once the appropriate motion for relief is made, the Court should find that the
18 aforementioned prohibition is inorganic and void.
19

20 **Federal Case Law Prohibits the Guam Legislature from undermining**
21 **the Federal Court's Consent**
22 **Decree in CV99-00102, and the Stipulated Order in CV02-00035.**

23 Bill 97 is premised on a mistake in fact. The Bill assumes that "The Legislature finds that
24 conditions are unchanged from a year ago, when P.L. 26-81 [the Legislature's one year

1 moratorium on the surcharge] became law.” Bill 97, Sec. 1. Conditions have substantially
2 changed from one year ago in that the Federal U.S. District Court of Guam has rendered the
3 Consent Decree in CV99-00102, and the Stipulated Order in CV02-00035 and the Government of
4 Guam, which includes the 27th Guam Legislature, and GWA are required to comply with the
5 mandates established in those Court Orders.

6 As stated above, if Bill 97 is passed into law, GWA will not be able to comply with the
7 Consent Decree in CV99-00102 and the Stipulated Order in CV02-00035. It is a well settled
8 principal of Federalism that a valid state law cannot stand in the way of a Federal Court’s remedial
9 scheme if the state law impairs any action essential to enforce the scheme. *Hook v. Arizona*
10 *Department of Corrections*, 107 F.3d 1397, 1402 (9th Cir. 1997). Thus, once the appropriate
11 motion is made, the Court should find that the law resulting from Bill 97 is an unlawful bar to the
12 U.S. District Court of Guam’s enforcement of its remedial schemes set forth in the Consent
13 Decree in CV99-00102 and the Stipulated Order in CV02-00035.

14
15 **Bill 97 violates the Doctrine of Separation of Powers because the**
16 **Guam Legislature is unlawfully interfering with the PUC’s**
17 **Independent Utility Rate Making Authority.**

18 Should Bill 97 be passed into law, the 27th Guam Legislature would violate the doctrine of
19 Separation of Powers. The separation of powers doctrine exists to prevent the abuses that can
20 flow from centralization of power. *In Re Request of Governor Carl T.C. Gutierrez, Relative to*
21 *the Organicity and Constitutionality of Public Law 26-35*, 2002 Guam 1, ¶33 (Supreme Court of
22 Guam, (February 7, 2002). Further, the concentration of the separately delineated powers in the
23 hands of one branch of government may justly be pronounced the very definition of tyranny. *Id.*

1 Under the Separation of Powers Doctrine, one branch of government is prohibited from either
2 delegating its enumerated powers to another branch of government or aggrandizing its powers by
3 reserving for itself the powers given to another branch. *Santos v. Calvo*, CV80-0223A (D.Guam
4 App. Div. Aug. 11, 1982).

5 Here, should Bill 97 be passed into law, the 27th Guam Legislature will be aggrandizing its
6 powers by usurping the power of the PUC to set utility rates. In 1989, the PUC was reestablished
7 under Guam Law as a rate making authority, independent of the Executive Branch, to satisfy a
8 Federal condition for merging Guam and the U.S. Navy's electrical power and transmission assets
9 and for the U.S. Military forces on Guam to become customers of GPA. The U.S. Congress,
10 determined that the establishment of the PUC was necessary to prevent the Guam Legislature's
11 historical interference with utility rate setting. PUC Resolution dated September 24, 2003 and
12 *U.S. House of Representatives Conference Report 98-1159*, page 253. Thus, under Guam Law,
13 the PUC is the only governmental body authorized to establish utility rates, and the Federal
14 Government required the PUC's existence to end the Guam Legislature's historical interference
15 utility rates.

16 Here, the PUC lawfully exercised its independent rate making authority by establishing the
17 surcharge to pay GWA's obligations to GPA, and then extending the term of the surcharge to
18 ensure GWA would have sufficient revenue to make the payments required by the Consent
19 Decree in CV99-00102. The 27th Guam Legislature is attempting to usurp this authority by
20 abolishing the surcharge for three years. The PUC has determined that, should Bill 97 be passed
21 into law, the Government of Guam and GWA would breach their commitments to the U.S.
22 District Court of Guam and the United States of America in the Consent Decree and the

1 Stipulated Order. PUC's September 24, 2003 Resolution. Further, the PUC has determined that,
2 should Bill 97 become law, the consequent inability of GWA to pay its debt to GPA would put
3 GPA in jeopardy of bond default at a critical juncture in its relationship with financial rating
4 agencies. *Id.*

5 Neither Bill 97, nor any of the testimony presented during the Bill's public hearing on
6 September 29, 2003, demonstrate any overriding constitutional need that would justify the Bill's
7 disruptive impact. Bill's specious finding that GWA ratepayers should not be penalized for past
8 mismanagement by the surcharge, is not supported by law. Assuming *arguendo* that all the
9 allegations of GWA's past mismanagement were true, said mismanagement does not excuse
10 GWA's contractual liability to GPA and the U.S. Navy. Absolutely no proof of any kind was
11 presented showing that GWA did not in fact use the electrical service or the U.S. Navy water that
12 it was billed for, or that the contractual agreements between GWA or the U.S. Navy were
13 unenforceable. Thus, should Bill 97 become law, the Court should find, once the appropriate
14 motion is made, that the law's impingement on the PUC's rate making authority would be an
15 impermissible violation of the separation of powers doctrine.

16
17 **The Court may hold any Government of Guam Officials, to include the Elected**
18 **Officials of the 27th Guam Legislature, in Contempt for their failure to**
19 **comply with the mandates set forth in the Consent Decree in CV99-00102 and the**
20 **Stipulated Order in CV02-00035.**

21 Federal District Courts have the inherent authority and duty to protect and effectuate their
22 judgements and to punish disobedience of or resistance to their lawful orders or decrees. *Morales*
23 *Feliciano v. Rosello Gonzalez*, 124 F.Supp.2d 774 (D.Puerto Rico, 2000). Further, Federal

1 Courts have the authority to punish contempt whether the sanctioned conduct is before the court
2 or beyond it. *In Re Orthopedic "Bone Screw" Products Liability Litigation*, 132 F.3d 152 (3d
3 Cir., 1997). Here, as stated above, the 27th Guam Legislature is a part of the Government of
4 Guam, which is party to CV99-00102 and CV02-00035. Further, the Consent Decree and the
5 Stipulated Order in those respective cases are as binding on the Guam Legislature as they are on
6 the rest of the Government of Guam and GWA. As stated above, should Bill 97 become law, the
7 law would violate the express provisions of the Stipulated Order CV02-00035. Thus, by passing
8 the three year abolishment of the surcharge into law, the 27th Guam Legislature would be in direct
9 violation of a valid and enforceable Federal Court Order, and its members, despite the fact that
10 they are elected state officials, will be subject to contempt sanctions imposed upon them for their
11 disobedience and resistance to said Federal Court Orders.

12 It should be noted that during the public hearing on Bill 97, the CCU, through the
13 testimony it presented, placed the 27th Guam Legislature on notice that the passage of Bill 97 into
14 law would result in violations of the Federal Court Orders. Further, as evidenced by the Letters
15 from Senator Jesse Anderson Lujan attached as Exhibits A and B herein, some Senators, most
16 notably Senator Lujan, are aware of the Judgement in CV99-00102 and the Federal Lien on
17 GWA's assets that resulted from it. Further, as evidenced by said letters, GWA anticipates that
18 there may be an attempt to distort the facts and record in CV99-00102 and CV02-00035. In
19 CV99-00102, the facts and record concern valid and enforceable debts the Government of Guam
20 and GWA owe to the U.S. Navy for water the U.S. Navy did not have to provide to the people of
21 Guam. In CV02-00035, the facts and record concern the Government of Guam and GWA's
22 responsibility to develop and maintain its water and wastewater systems to comply with the

1 Federal Clean Water Acts and Safe Drinking Water Acts.

2 Neither case concerns “injustices and deprivation of private property rights by one federal
3 agency or another,” or the “fair treatment from the Navy and all other federal agencies insofar as
4 our native lands are concerned.” Further, neither case concerns a “half-baked” or ill thought out
5 settlements. If the Court must exercise its contempt powers to enforce its remedial schemes in
6 either CV99-00102 or CV02-00035, any sanctioned party must be reminded that the remedial
7 schemes established by the Court Order are long term solutions that will result in a financially
8 stable GWA which provides safe drinking water to the residents of Guam and protects Guam, its
9 people, and surrounding oceans, and any U.S. Military presence or build-up on Guam, from
10 bacteriological contamination from sewage.

12 CONCLUSION

13 Based on the foregoing, should Bill 97 become law, it would result in violations of the
14 Consent Decree in CV99-00102 and the Stipulated Order in CV02-00035. To address these
15 violations, the Court may strike down the law, after the appropriate motion is made, on the
16 grounds that it is Inorganic, it undermines a federal remedial scheme imposed by Court Order, it is
17 an unlawful violation of the doctrine of separation of powers, and the Court has the broad
18 discretion to sanction the 27th Guam Legislature, or any of its elected officials, for disobeying or

19 ///

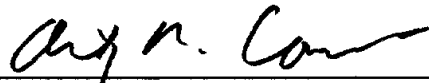
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21 ///

22 ///

1 resting the federal remedial schemes imposed by the Consent Decree in CV99-00102 and the
2 Stipulated Order in CV02-00035.

3 **RESPECTFULLY SUBMITTED** this 3rd day of October, 2003 by:

4
5
6 
7

8 ANTHONY R. CAMACHO, ESQ.
9 Staff Attorney for the CCU, GPA, and GWA
10

11 **CERTIFICATION**
12

13 I, Lou Sablan, Board Secretary for Guam's Consolidated Commission on Utilities hereby
14 certifies that copies of the Defendant Guam Waterworks Authority's Status Memorandum Re Bill
15 97 were served via facsimile and personal service to the attorneys of record at the following
16 addresses:

17 Douglas B. Moylan
18 Attorney General of Guam
19 Guam Judicial Center, Suite 2-200E
20 120 West O'Brien Drive
21 Agana, Guam 96910
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23

Mikel W. Schwab
Assistant United States Attorney
Suite 500, Sirena Plaza
108 Herman Cortez
Agana, Guam, 96910
Fax No. (671)472-7332

24 **DATED** this 3d day of October, 2003 by:

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28 LOU SABLAN
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THE OFFICE OF THE HONORABLE
Jesse Anderson Lujan
Senator, 27th Guam Legislature
Assistant Minority Whip
Chairman Sub-Committee on "Open Skies"



Sen. 1973
Jesse Anderson Lujan
Professional Office
120 East Marine Dr.
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96920
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Email: janderson@guamleg.gov

September 30, 2003

Mr. Simon Sanchez
Chairman
Consolidated Commission on Utilities
P.O. Box 21929
GMF, Guam 96921

Dear Mr. Sanchez:

In the public hearing on 9/29/03 at the legislative hearing room, in response to my inquiry about the impact of the Federal Lien on all GWA property, you responded that I was misinformed. You stated that no such lien exists implying that I was misstating the facts.

As it turns out, I conducted some brief research to further confirm my facts. I enclose a copy of an Abstract of Judgment, recorded at the Department of Land Management and the District Court of Guam, that does in fact place a lien on all GWA property. As you should know, this lien may severely handicap Guam's ability and flexibility to privatize GWA. It also places all our water resources at risk of being taken away from the people of Guam. For these reasons I stated that this was a half-baked settlement that you consented to even when you apparently had substantial grounds to contest the amounts claimed as owing and that has placed all our water resources at such terrible risk.

Your misleading statements in the legislative hearing room were either intended or deceive the Senators and public present, or you are completely uninformed of the impact of your actions as CCU chairman. Both instances do a terrible disservice to the people of Guam and do incredible damage to us all.

Moreover, you now owe to the people of Guam to clarify your misstatements and to set the record straight and to do so promptly,

Sincerely,


Jesse Anderson Lujan
Senator

Cc: Governor of Guam, All Senators, All CCU members, All Media

"EXHIBIT A"

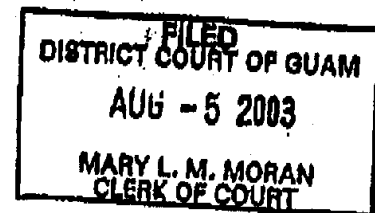
Island of Guam, Government of Guam
Department of Land Management Office of The Recorder

878254

File for record is Instrument No. _____
the year 05 Month 08 Day 07 Time 10:02

Recording Fee DE-OFFICIO Receipt No. _____

By: Jane Yanesaki



ABSTRACT OF JUDGMENT

Notice

Pursuant to Title 28, United States Code, Section 3201, this judgment, upon the filing of this abstract in the manner in which notice of tax lien would be filed under paragraphs (1) and (2) of 26 U.S.C. §6323(f), creates a lien on all real property of the defendant(s) and has priority over all other liens or encumbrances which are perfected later in time. The lien created by this section is effective, unless satisfied, for a period of 20 years and may be renewed by filing a notice of renewal. If such notice of renewal is filed before the expiration of the 20 year period to prevent the expiration of the lien and the court approves the renewal, the lien shall relate back to the date the judgment is filed.

Names and Addresses of Parties against whom judgments have been obtained	Names of Parties in whose favor judgments have been obtained
GOVERNMENT OF GUAM WATERWORKS AUTHORITY P.O. Box 3010 Hagatna, Guam 96932	UNITED STATES OF AMERICA CIV 99-00102

Amount of Judgment	Names of Creditors' Attorneys	When Docketed
\$0.00 + 1.25% int.	UNITED STATES ATTORNEY SIRENA PLAZA, SUITE 500 108 HERNAN CORTEZ AVENUE HAGATNA, GUAM 96910-5059	05/09/2003 (EOD 05/12/2003)

UNITED STATES OF AMERICA,

CLERK'S OFFICE

U.S. DISTRICT COURT FOR THE
DISTRICT OF GUAM
SS.

I hereby certify that the annexed
instrument is a true copy of the
original on file in my office.

ATTEST: CLERK OF COURT
District Court of Guam
Territory of Guam

Date,

AUG - 5 2003

MARY L.M. MORAN, Clerk.

By: /s/ Renee M. Martinez, Deputy Clerk.

legal issues, there was a more fundamentally important issue at stake in this settlement. That issue was our long-standing demand for fair treatment from the Navy and all other federal agencies insofar as our native lands are concerned. Instead, you have led the charge to legitimize much questionable behavior, and undermined the hard and difficult work of so many who have come before you who have yearned for, and fought for, justice in these matters. Now, we must also pay a "past due" bill of over nine million dollars (\$9,000,000.000) Compounding this insult with further injury we will also be required to pay for future water use that is ours by our birthright.

I also take issue with the flippant and cavalier way in which you dismiss the significance of the federal lien you sponsored on all our water resources. This lien will impede our ability to privatize in a way that promotes the lowest rate structure for our people. Contrary to your assertion, I have never advocated that we place one government owned utility monopoly with another privately owned one. I have instead promoted what I call "competitive utilities". In the case of GWA, that means privatizing by selling the water production facilities to at least three (3) different private companies who will compete against each other for water customers. These companies or any other future comers should be allowed to develop their own water production facilities. With respect to the main distribution lines, they can be managed by a private company under a management agreement with rates for their use to be set by the CCU subject to PUC approval. In that way these private companies, and any others who may wish to participate, can solicit customers on a competitive basis. It is through competition that we can get lower rates. In this way we do not have to go into debt to the tune of over two hundred million dollars (\$200,000,000.00) before we can start the process of obtaining a more efficient, reliable, and low cost water supply through privatization. By selling these water production facilities we also encourage any private purchasers to maximize their investments in what they will own in perpetuity.

Your attempt to incur huge debts, stick us with the bill, and then find complaint and paint private companies to "manage" these asset smacks of empire building. You should stop now.

Sincerely,



Jesse Anderson Lujan
Senator

cc: Governor of Guam
All Senators
Guam Chamber of Commerce
Members of CCU
All media